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No. 97-1132

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1997

ZACHARY TAYLOR, as Executor of the Estate of Jack C. Taylor, Jr., Deceased and THE TAYLOR FAMILY PARTNERSHIP,

Petitioners,

vs.

CHARLIE JAQUEZ, JR.; PETE E. ESPINOSA; ELMER MANUEL ESPINOZA; JOE A. GALLEGOS and ROGER ROMERO; Individually and as Representatives of a Proposed Class of Some 110 Plaintiffs in Civil Action No. 81CV5 now pending in the District Court of Costilla County, Colorado,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the lower federal courts have appropriately abstained from interference with a pending Colorado state court action.

PARTIES TO THE PROCEEDING

The parties affected by this petition include those named in the caption as well as those class members alluded to by the caption but not specified or yet determined by any court.

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OPINIONS BELOW

Petitioner has cited the United States Court of Appeals for the Tenth Circuit case of *Taylor v. Jaquez*, 126 F.3d 1294 (10th Cir. 1997), and appended a copy of that opinion to the Petition for Writ of Certiorari. Also appended to the Petition is the unpublished ruling of the district court in *Taylor v. Jaquez*, Civ. No. 96-Z-776 (D. Colo. August 22, 1996). Also pertinent is the Colorado Supreme Court decision which is being challenged by Petitioner and which appears at *Rael v. Taylor*, 876 P.2d 1210 (Colo. 1994).

JURISDICTION

Respondents do not challenge the jurisdiction of this Court to consider this Writ of Certiorari pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS IMPLICATED

Petitioner correctly cites 28 U.S.C. § 2283, as pertinent to this case. That provision provides that:

> A court of the United States may not grant an injunction to stay proceedings in a state court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

Also pertinent to the case is the Colorado statutory scheme often referred to as the Colorado Torrens Title Registration Act, sections 118-10-1 to -102, 5 C.R.S. (1953).

STATEMENT OF THE CASE

The pending Petition for Writ of Certiorari is the latest in a continuing series of attempts by Petitioner (hereafter "Taylor") to enjoin litigation that has been pending in the Colorado state court system since 1981. In that year, respondents (hereafter "State Court Plaintiffs") brought suit to quiet title to their historic rights to graze, pasture, timber, hunt, fish and recreate and gather firewood on some 77,500 acres of land in southern Colorado.

Taylor filed his federal action on April 2, 1996, fifteen years after the State court action was filed. During those fifteen years, Taylor did not challenge the state proceedings in the federal system,[1] but instead choose to allow the matter to be adjudicated by Colorado courts. During the course of the state court litigation, both the Colorado Supreme Court and the Colorado Court of Appeals issued opinions reversing portions of an order of summary judgment that had been entered by the Costilla County District Court in 1984, and remanding the case for trial. *See Rael v. Taylor*, 876 P.2d 1210 (Colo. 1994); *Rael v. Taylor*, No. 87CA0658, slip op. (Colo. App. 1995.)

[1] In 1981, Taylor petitioned to have the state case removed to federal court, but did not make any attempt at that time to seek an injunction against the state court proceeding. The removal petition was denied by then presiding district court judge Finesilver.

The basic finding of the Colorado Supreme Court was that principles of constitutional due process require that reasonably ascertainable defendants in a Torrens quiet title action be individually named and served in order to be subjected to binding judgments affecting their property interests. The Colorado high court was fully apprised of Taylor's federal claims and explicitly honored the preceding federal decision as to all those who had been properly made parties to it. Following the Colorado Supreme Court decision, Taylor did not immediately seek certiorari to this Court, but instead participated in ongoing state proceedings for several years before finally filing his action in federal district court.

On April 24, 1996, after Taylor filed his federal action to enjoin the ongoing state court proceeding, State Court Plaintiffs filed a Motion to Dismiss Complaint for Failure to State a Claim. The five grounds for their motion included: 1) the *Younger* abstention doctrine;[2] 2) this Court's analysis in *Parson's Steel, Inc., v. First Alabama Bank of Montgomery*, 474 U.S. 518 (1986); 3) the sound policies underlying the Anti-Injunction Act; 4) the absence of an irreparable harm to support an injunction; and, 5) the principle that *res judicata* cannot bar an action brought by nonparties to prior litigation.

Documentary evidence was presented by both sides and therefore the district court handled the motion as one for summary judgment pursuant to Fed. R. Civ. P. 56(c). The district court dismissed the case based upon both the

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[2] The abstention doctrine first defined in *Younger v. Harris*, 401 U.S. 37 (1971).

Younger abstention and *Parson's Steel*, grounds raised by State Court Plaintiffs. Because it dismissed on those two grounds, the district court did not find it necessary to reach the other grounds urged by State Court Plaintiffs.

Taylor appealed the district court decision to the Tenth Circuit Court of Appeals. That court sustained the district court's decision on the basis of the *Younger* abstention doctrine, finding it unnecessary to reach the other grounds for dismissal which had been urged by State Court Plaintiffs.

REASONS FOR DENYING THE WRIT

Both federal and state courts have already analyzed all of the arguments raised by Taylor in this petition. Those courts – including the Colorado Supreme Court in *Rael v. Taylor*, the federal district court below and the Tenth Circuit Court of Appeals – have determined that the integrity of the federal judicial system is in no way compromised by the ongoing state action. They have held that federal claims can be adequately litigated in the ongoing state court case. The two federal courts which have considered this case have explicitly found that this Court's *Younger* abstention doctrine would be offended by federal intervention into this matter.

Even if this Court wished to reexamine the *Younger* principle, or (as Taylor seems to suggest) this Court's decision in *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 107 S.Ct. 1519, 95 L. Ed. 2d (1987), this case would constitute a poor vehicle for such reexamination. The facts of this matter are both unusually complex and unique. They

involve land transactions predating the transfer of sovereignty over what is now Colorado to the United States. They are intertwined with the original settlement of southern Colorado by Hispanic settlers (over long periods of history) who were promised the right to use land by original holders of Mexican land grants. The underlying facts of this case reflect the unique manner in which Colorado's oldest community grew and prospered. The case implicates the interplay between traditional and customary Mexican land use patterns and principles of Anglo-American law.

In their Colorado action, State Court Plaintiffs have alleged that although the names and information relating to the location of many hundreds of property owners with use rights in the impacted area were readily ascertainable from public records, no effort was made to personally name or serve those property owners as parties in the original Torrens quiet title action.[3] Based upon those allegations, the Colorado Supreme Court concluded that:

> [I]f the petitioners prevail on this issue (notice), the doctrine of *res judicata* cannot bar their

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[3] This allegation was never seriously litigated before the federal court in *Sanchez v. Taylor*, 377 F.2d 733 (10th Cir. 1967). However, in recent pre-trial hearings in the ongoing state case, a preliminary finding was made that the due process notice rights of at least some of those property owners were in fact violated. In related preliminary motions, the state trial court refused to certify a plaintiff class. However the state litigation is ongoing and, at an appropriate time, State Court Plaintiffs expect to seek review of the state court's class certification decision.

> claims because neither they nor their predecessors in interest can be deemed parties to the 1960 Torrens action.

Rael v. Taylor at 1219.

While this case presents unique and complex facts, the principles of law being applied are not complicated. The basic principle being utilized is that those who do not receive adequate due process notice of the existence of an action are not effectively made parties in that action and, therefore, cannot be bound by a decision in it. There is nothing extraordinary in that principle. There is no need for this Court to grant Certiorari to review it.

I. The Decision Below Presents No New Or Unique Law With Reference To The *Younger* Abstention Doctrine. Therefore, There Is No Reason For This Court To Grant Certiorari.

The Tenth Circuit Court of Appeals has traditionally held that *Younger* abstention is appropriate if three criteria are met. Those include: The existence of an ongoing state judicial proceeding; an adequate opportunity to raise federal claims in the ongoing state proceeding; and, the existence of an important state interest. *See Seneca-Cayuga Tribe of Okla. v. State of Okla. ex rel. Thompson*, 874 F.2d 709 (10th Cir. 1989.)

Taylor does not dispute that these criteria describe the necessary elements for *Younger* abstention. Moreover, Taylor concedes that two of these elements are satisfied in the case. He agrees that there is an ongoing state judicial proceeding. He concedes that he is being provided an

adequate opportunity to raise all of his federal claims in that ongoing proceeding.

Seneca-Cayuga's third factor also has clear application to this matter. When the Colorado Supreme Court comprehensively addressed the state Torrens Act's notice requirements, it was addressing an issue of central importance to the State of Colorado. It was not the resolution of a private dispute upon which that Court focused. Rather, the Colorado Supreme Court's ruling affected the ability of people with interests in Colorado land to learn that those interests were being threatened in a Torrens proceeding and, thereby, gain the ability to meaningfully participate in the judicial process. It is only to the extent that people are properly and formally informed of a judicial threat to their interests that they will have a meaningful and timely opportunity to access the courts to assert their legal positions.

It is access to Colorado courts which is the essential state interest protected by *Rael v. Taylor* – not the substantive resolution of private disputes. This was the finding of the federal district court. The Tenth Circuit Court of Appeals agreed as it noted:

> As the federal district court noted here, what more important state interest is there for the state court to address than the enforcement of its method of registering good title to privately owned lands within the state. That individual citizens may raise these issues does not transform the state interest into a private one.

See Taylor v. Jaquez, reprinted at Petitioner's Appendix A, page 7a.

This Court's ruling in *Pennzoil Co. v. Texaco Inc.*, 481 U.S. 1, 107 S. Ct. 1519, 95 L. Ed. 2d 1 (1987), is central to the resolution of Taylor's contentions in this respect. In *Pennzoil*, this Court held that the level of appeal bonds required as a condition precedent for litigating in state appellate courts was a matter of important state court interest justifying federal abstention. Access to state courts was found to be a matter of urgent state concern. Of course, access to state court proceedings can be denied just as effectively by inadequate notice of the existence of important proceedings as by a requirement for an inordinately high financial deposit in order to participate in such proceedings.

The decision below presents no new or unique law with reference to the *Younger* abstention doctrine. Even if this Court were inclined to reexamine the principles it has already established in this area, the complex factual and procedural history of this case would make it a poor vehicle for such reexamination.

II. The Decision Below Does Not Place The Tenth Circuit In Conflict With Any Other Circuit With Reference To The Appropriate Interpretation Of The *Younger* Abstention Doctrine. Different Results In Cases Cited By Petitioner Reflect Nothing More Than The Disparate Factual Contexts For Those Decisions.

In an attempt to find a conflict of law among the varying Circuit Courts of Appeal, Taylor cites cases in which *Younger* abstention has been found to be inappropriate. However, what distinguishes those cases is not differing analysis of the law but rather very different

facts to which such analysis was applied. There is no basic doctrinal conflict between *Younger* abstention law as applied by the Tenth Circuit Court of Appeals and that utilized in other circuits or by this Court. There is nothing in any of the cases cited by Taylor to suggest that a case substantially indistinguishable on the facts from this one would have been decided differently in another circuit. This point is important. As one noted commentator has pointed out:

> Cases are properly regarded as conflicting if it can be said with confidence that another circuit would decide the case differently because of language in an opinion in a case having substantial factual similarity.

ROBERT L. STERN, EUGENE GRESSMAN, STEPHEN M. SHAPIRO, KENNETH S. GELLER, SUPREME COURT PRACTICE, SEVENTH EDITION § 6.31(a) (1993).

In asserting that there is conflict in abstention law as between the Tenth Circuit and that of the Eighth and Eleventh Circuits, Taylor relies upon cases which are factually dissimilar from the instant matter. There is no reason to believe that the courts which decided those cases would have decided this case – based as it is upon its own unique facts – differently than did the Tenth Circuit Court of Appeals.

Thus, for example, Taylor heavily relies upon *Daewoo Elecs. Corp. of Am. v. Western Auto Supply*, 975 F.2d 474 (8th Cir. 1992). However, as that case notes,

> [A]n essential prerequisite for application of the relitigation exception is that the claims the federal injunction insulates from litigation in state

> proceedings have actually been decided by the federal court.

Id. at 477, *citing Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 148; 108 S. Ct. 1684; 100 L. Ed. 2d 127 (1988).

In the current case, the Tenth Circuit Court of Appeals noted that only passing mention of the issue of notice was made in the original Torrens action. *See* Petitioner's Appendix A, p. 7a. On the other hand, the detailed and specific procedural due process problems discussed and resolved by the Colorado Supreme Court in *Rael v. Taylor* were not considered in the original Torrens case. Those issues were therefore not determined in that earlier matter.

Moreover, the facts of *Daewoo* are completely distinguishable from those in this case. Daewoo's basic claim was that because its complaint in federal district court sought only $73,250 in damages while its complaint in state court sought $187,000 in damages, the two claims were different for purposes of relitigation analysis. It was that contention which the Eighth Circuit rejected, finding that the pending state claim included the same parties and the same basic issues as had the previous federal adjudication. *Daewoo Electronics* at 477. This is obviously a very different situation from that in the instant case. In fact, there is nothing in *Daewoo* which suggests that the Eighth Circuit Court of Appeals would have decided *this* case any differently than did the Tenth Circuit Court of Appeals.

The other Eighth Circuit case heavily relied upon by Taylor is *In re SDDS, Inc.*, 97 F.3d 1030 (8th Cir. 1996). However, that case serves Taylor no better than does

Daewoo Electronics. Again, there is no factual similarity between the *SDDS* case and the instant matter. Nor is there any conflict in the analytical approach utilized by the *SDDS* court and that utilized by the lower courts in this matter.

Interestingly, while dealing with a complex set of procedural facts very different from those in the current case, the *SDDS* court noted:

> We apply four factors to determine whether the doctrine of [claim preclusion] bars this appeal: (1) whether the issue decided in the former adjudication is identical with the present issue; (2) whether there was a final judgment on the merits; (3) whether the parties are identical; and (4) whether there was a full and fair opportunity to litigate the issues in the prior adjudication.

Id. at p. 1040. Of course, it is the contention of State Court Plaintiffs in this case that they are not identical parties to those in the earlier Torrens action. Moreover, they maintain that because of their lack of constitutionally adequate notice, they were deprived of a full and fair opportunity to litigate their issues in the prior adjudication.

Unlike the current matter, the *SDDS* case does not implicate essential state interests of access to the state courts. Its reasoning is in no way contradictory to that of the Tenth Circuit Court of Appeals in this matter.

Finally, Taylor cites and relies upon *First Alabama Bank of Montgomery, N.A. v. Parsons Steel, Inc.*, 825 F.2d 1475 (11th Cir. 1987), *cert. denied*, 484 U.S. 1060, 108 S.Ct. 1015, 98 L. Ed. 2d 980 (1988). This decision was made on remand from this Court and it was this Court's decision

in that very matter which served as an alternative basis for the federal district court's dismissal of the instant action.

In *Parson's Steel, Inc. v. First Alabama Bank*, 474 U.S. 518 (1986), this Court held that pursuant to the Full Faith and Credit Act, a federal court must give the same preclusive effect to a state court judgment as would another court of the same state. State Court Plaintiffs have pointed out that since the Colorado Supreme Court has finally and definitively declared the due process notice obligations of a Torrens plaintiff in its *Rael v. Taylor* decision, those principles deserve full faith and credit in federal courts.[4]

While the Eleventh Circuit's decision in *First Alabama* (following this Court's remand) is interesting, it has virtually nothing to do with facts such as those which exist in the instant matter. Certainly there is nothing in it which suggests that the criteria utilized by the Tenth Circuit in evaluating *Younger* abstention are incorrect. On the other hand, *First Alabama* explicitly recognizes that federal abstention is appropriate when an ongoing state court proceeding implicates a state's important interests in administering its judicial system. *See First Alabama*

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[4] State Court Plaintiffs have also noted that any disagreement with the *Rael v. Taylor* final decision in this respect should have been raised directly to this Court from the State Supreme Court by request for Certiorari. *See Parson's Steel*, 474 U.S. at 525. The federal district court noted this problem and resisted being forced into an improper role as the appellate court from a decision made by the Colorado Supreme Court.

Bank of Montgomery, N.A. v. Parsons Steel, Inc., 825 F.2d at 1483.

An analysis of all the cases cited by Taylor suggests only that there is no conflict between the Tenth Circuit and other Circuit Courts of Appeal with reference to the appropriate interpretation of the *Younger* abstention doctrine. To the extent that the various cases cited have different results, it is because the facts of the various cases are quite different.

III. The Decision Below Does Not Extend *Younger* Abstention At All. Rather, It Simply Applies Long Standing Principles Within A Complex And Unique Factual Context. Certiorari Is Not Necessary To Protect The "Vitality" Of The Federal Court Judgments Precisely Because There Is No Credible Threat Against Which To Protect.

In his Petition for Certiorari, Taylor apparently urges this Court to reconsider its decade old decision in *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 107 S. Ct. 1519, 95 L. Ed. 2d (1987). Complaining that in *Pennzoil* only five members of this Court "agreed that *Younger* abstention was appropriate because of the important state interest . . . ," Taylor asserts that this Court's decision in *Pennzoil* "begs the question." Moreover, Taylor suggests that somehow the very "vitality of federal court judgments and decrees" is endangered. *See* Petition at p. 10.

State Court Plaintiffs would like to point out that the "vitality of federal court judgments and decrees" has apparently been adequate over the last decade since the *Pennzoil* decision. The concept announced in *Pennzoil* –

that access to state court processes constitutes a vital state interest – has not endangered the federal court system. Nor does the Tenth Circuit's decision in this case represent any threat to the dignity or power of the federal judicial system. In fact, the Tenth Circuit was correct in finding that Colorado's interest in ensuring due process notice in pending court hearings is a sufficiently important state interest to justify *Younger* abstention.

In *Rael v. Taylor*, the Colorado Supreme Court refused to declare the federal Torrens action "void."[5] To the contrary, it clearly accorded full faith and credit to that federal judgment and found the decision absolutely binding upon all those who were parties to it. The federal district court and the Tenth Circuit Court of Appeals reciprocated by extending full faith and credit to the finding of the Colorado Supreme Court concerning the due process notice requirements of Colorado law with regards to Torrens actions.

This mutual showing of respect by the federal and state courts constitutes no threat to the vitality of either system. To the contrary, it precisely manifests that principle of *comity* which is the proper basis for a healthy

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[5] The Colorado Supreme Court rejected State Court Plaintiffs contention that if their challenge were successful, it would render the federal confirmation decree void for all purposes. The Colorado court was careful to emphasize that only persons denied adequate notice (and therefore not parties to the earlier action) could attempt to establish their property interests in the subject property. *See Rael v. Taylor*, 876 P.2d at 1224.

relationship between the varying courts in the republic which is the United States of America.

CONCLUSION

There is no need for this Court to grant Certiorari and review this matter. It is true that this case presents interesting historical and factual issues and is important to State Court Plaintiffs, who have been struggling for a hearing on their claims for almost two decades. Presumably, it is also true that the case is important to Taylor as he decides how to manage his land in southern Colorado. However, both the federal district court and the Tenth Circuit Court of Appeals were correct in rejecting federal intervention. The case is being appropriately litigated in state court where there is (and will be) adequate opportunity for Taylor to raise all his federal issues.

While this case is complicated and its facts unique, there is absolutely no reason for the United States Supreme Court to become involved with this matter at this time. Therefore, State Court Plaintiffs request that this Court reject the pending Petition for Certiorari.

Respectfully submitted,

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